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EXAMINER

LEZAK, ARRIENNE M

ART UNIT	PAPER NUMBER
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2143

DATE MAILED: 02/09/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/803,406

Applicant(s)

LOEB, GERALD E.

Examiner

Arrienne M. Lezak

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM  
THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-26 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |                                                                                                                        |                                                                                         |
|------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                                                       | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____.                                                |

### **DETAILED ACTION**

Examiner notes that Claims 1, 6, 9-11, 15, 21 & 26 have been amended, and no claims have been cancelled or added since issuance of the prior Office Action. Claims not explicitly addressed herein are found to be addressed within prior Office Action dated 26 August 2004 as reiterated herein below.

#### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Newly Amended Claims 1, 9-11, 15, 21 & 26 are rejected under 35 U.S.C. 112, first paragraph, because the specification does not reasonably provide enablement for a "substantially simultaneous" transmission. The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to define the invention commensurate in scope with these claims. Examiner requires the deletion of the terminology "substantially simultaneous".

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Newly Amended Claims 1, 9-11, 15, 21 & 26 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In particular,

Examiner requires the deletion of the terminology "substantially simultaneous" as the same is indefinite.

5. For purposes of this Office Action, the amended portion of the claim language containing the terminology "substantially simultaneous" will not be examined.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1, 6, 9-12, 15, 20, 21 & 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over extensive consideration of US Patent US 6,249,809 B1 to Bro.

8. An audio/video-call system for allowing communication between a first user and a second user, wherein the communication includes an audio stream, a video stream, and a data stream, (Abstract, Cols. 1-12), the system comprising:

- a first and second, (or multiple – per pending Claim 6), (Col. 7, lines 61-67), communication systems separated geographically, wherein the first user alone, (per Claims 9 & 10) or the first user and the second, (or third, etc.) user each control one of the communication systems, and wherein each of the communication systems include a video camera, a microphone, an Internet, (Col. 6, lines 51-54) socket for connecting the communication system to the Internet, and a phone socket for

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connecting the communication system to a phone line, (Col. 2, lines 30-67; Col. 3, lines 1—67; and Col. 4, lines 1-33). (Examiner notes that as Bro teaches a client telecommunication interface, said interface would obviously include a video camera and microphone, as a video camera and microphone are both recording/communicating means and the same would have been obvious within a system requiring an ability to record and transmit a multimedia signal to, from and between patients and care givers);

- wherein the Internet is used for sending a data stream initiating a call from the first communication system to the second communication system, (or third, etc.), and for transmitting the video stream and the data stream between the first and the second , (or third) communication systems once the call is initiated, (Col. 10, lines 42-44); and

- wherein once the call is initiated, the phone line is used for sending the audio stream between the first user and the second, (or third, etc.) user, (Col. 2, lines 62-66; Col. 5, lines 55-58; and Col. 6, lines 32-35), (Examiner notes that in light of the teachings of Bro, it would have been obvious to send the audio stream through the phone line as the phone line has traditionally been the means by which audio streams are transmitted); and

- wherein a request from the first communication system to establish a communication link with the second communication system causes the second communication system to automatically display to the second user a set of choices, ("refuse call", "accept audio call only" and "accept audio and video call" – per pending Claim 12), on a television; wherein the television is either on or is activated on as a

result of the request, and wherein the response of the second user to one of the set of choices results in the call being established or the call being refused, (per pending Claim 11), (Col. 4, lines 19-32; Col. 7, lines 7-38; and Col. 10, lines 42-55), (Examiner notes that Applicant's specific set of choices would have been obvious in view of Bro which teaches client interaction through a screen interface and such choices as those enumerated by Applicant would be obvious and well known communication options); or

- wherein the first communication system also has a passkey mode of operation which allows the first communication system to establish communication with the second communication system without the second communication system responding to any request, (per pending Claim 15), (Col. 4, lines 26-32; Col. 6, lines 15-22; Col. 7, lines 39-67; Col. 8, lines 3-11; and Col. 10, lines 30-42), (Examiner notes that Bro teaches an automatic client connection, a smart card with memory, (per pending Claim 25), a magnetic card reader and a client ID number, the combination of which renders obvious Applicant's passkey mode as it is obvious that said smart card would include said client ID for security/access purposes); or

- wherein the communication system has a memory and an Internet socket for connecting to the Internet and a phone socket for connecting to a phone line, (Col. 10, lines 42-44); and wherein without the intervention of the user, an operator downloads a file to the memory which associates an identification object to the telephone number of a person to be called and the network address of the computer of the person to be called, (per pending Claim 21), (Col. 7, lines 39-67; Col. 8, lines 3-19; Col. 9, lines 53-58; Col. 10, lines 30-67; and Col. 11, lines 1-26), (Examiner notes that

Bro teaches an automatic client connection, a smart card, a magnetic card reader, a client ID number, a virtual call center, a live operator and a client database, the combination of which renders obvious Applicant's operator interaction as it would have been obvious to for a live or virtual operator to connect directly to a client or caregiver through database information upon login or smart card use as said smart card would have sufficient information for connection and further, the convenience of a smart card access to an operator/virtual call center would make access easier for both patients and care givers – especially in emergency situations). Thus, Claims 1, 6, 9-12, 15, 20, 21 & 25 are found to be unpatentable over considerable consideration of Bro.

9. Regarding Claims 2, 3 & 26, Bro discloses an audio/video-call system further comprising a remote control system for issuing commands to the communication systems, (per pending Claim 2), (Col. 3, lines 5-27; Col. 4, lines 54-58; Col. 5, lines 16-41; and Col. 8, line 21), and wherein the remote control system includes a housing containing a set of user-activated buttons, a transmitter, and the microphone, (as noted obvious above), where in response to the user pressing one of the user-activated buttons, the transmitter sends a command to a television, (Col. 4, lines 33-63 & Col. 12, lines 42-43), and wherein when the user speaks during an audio/visual call, the microphone converts the voice of the user to an audio signal, and the transmitter sends the audio signal to the audio/video call system, (per pending Claims 3 & 26), (Col. 5, lines 24-30; Col. 6, lines 39-67; Col. 7, lines 1-33; Col. 10, lines 56-67; and Col. 11, lines 1-18). Thus, Claims 2, 3 & 26 are found to be unpatentable over considerable consideration of Bro.

10. Regarding Claims 4 & 5, Bro discloses an audio/video-call system further comprising a television socket for coupling the first communication system to a television, wherein the video stream and available commands to control the first communication system is displayed on the television, (per pending Claim 4), and wherein the television includes a speaker which broadcasts the audio stream once the call is initiated, (per pending Claim 5), (Col. 6, lines 39-67; Col. 7, lines 1-24; and Col. 10, lines 42-44), (Examiner notes that as Bro teaches the delivery of voice and visual messages on a television, the incorporation of speakers into the same would have been obvious and well known, as speakers are necessary for receipt of an audio signal). Thus, Claims 4 & 5 are found to be unpatentable over considerable consideration of Bro.

11. Regarding Claims 7, 13, 14 & 19, Bro discloses an audio/video-call system wherein the first user is a caregiver and the second user is an elderly or disabled individual, (Abstract & Col. 3, lines 5-27). Thus, Claims 7, 13, 14 & 19 are found to be unpatentable over considerable consideration of Bro.

12. Regarding Claim 8, Bro discloses an audio/video-call system further comprising a panic button wirelessly coupled to the second communication system, for the second user to indicate distress and for the second communication system to respond by contacting help, (Col. 2, lines 32-48; Col. 3, lines 47-54; Col. 6, line 40-46; Col. 7, lines 17-20; Col. 8, lines 38-42; Col. 9, lines 53-58; and Col. 12, lines 42-43), (Examiner notes that Bro teaches wireless communication through a one-button automatic dialer/client personal communicator, which communicator renders Applicant's panic



button communication device obvious as, among other functionalities, a one-button automatic dialer/client personal communicator could obviously facilitate a means by which a patient may indicate stress or contact help). Thus, Claim 8 is found to be unpatentable over considerable consideration of Bro.

13. Regarding Claims 16-18, Bro discloses an audio/video-call system wherein the digital data is encoded on a smart card, (per pending Claim 16), (Col. 8, lines 1-11), or stored within the first communication system, (per pending Claim 17), (Col. 10, lines 30-62), or (obviously) stored within a PDA, (per pending Claim 18), (Col. 2, lines 30-44 & Col. 3, lines 51-54) and is used to place the first communication system in the passkey mode of operation, (Examiner notes that Bro teaches a client database, a client ID number, smart cards with memory capabilities and the use of both wired and wireless communication, the combination of which renders Applicants claims unpatentable as within a system which may require an emergency response, (especially where one party may be incapacitated for instance), use of an alternative rapid means of direct connection would be obvious). Thus, Claims 16-18 are found to be unpatentable over considerable consideration of Bro.

14. Regarding Claims 22-24, Bro discloses an audio/video-call system wherein the operator retrieves information from a database for the file which is (obviously) downloaded to the memory, (per pending Claim 22), (Col. 8, lines 15-20 & Col. 10, lines 59-62), wherein the operator communicates with the first user via an (audio/video – per pending Claim 24) phone call, (per pending Claim 23), (Col. 2, lines 30-47; Col. 5, lines

24-30; Col. 9, lines 53-58; Col. 10, lines 56-67; Col. 11; and Col. 12, lines 1-2). Thus, Claims 22-24 are found to be unpatentable over considerable consideration of Bro.

### ***Response to Arguments***

15. Applicant's arguments filed 1 October 2004, have been fully considered but they are not persuasive. Applicant's arguments do not comply with 37 CFR 1.111(c) because they do not clearly point out the patentable novelty which he or she thinks the claims present in view of the state of the art disclosed by the references cited or the objections made. Further, they do not show how the amendments avoid such references or objections.

16. Applicant has newly amended Claims 1, 9-11, 15, 21 & 26, which are rejected as enumerated herein above. Applicant asserts that newly amended/added claims are patentably distinct from the prior art because they recite additional limitations enumerating "Internet data streaming" and "substantially simultaneous transmissions". Examiner disagrees finding that Bro discloses Internet data streaming, as noted herein above. Moreover, Examiner notes that the additional limitation of a "substantially simultaneous" transmission is indefinite, and as such is not considered part of the claim language for examination purposes. Examiner further notes that Applicant's argument pertaining to the "panic button" is not convincing as Bro does disclose wireless communication through a one-button dialer, which dialer could obviously be set-up to be an emergency indication rather than a mere request for communication. Thus, Examiner reiterates the original grounds for rejection as applied to newly amended Claims 1, 9-11,

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15, 21 & 26, as Examiner finds Bro to fully encompass and anticipate all claims, (original & amended), as enumerated by Applicant.

17. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

18. A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

### ***Conclusion***


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Arrienne M. Lezak whose telephone number is (571)-272-3916. The examiner can normally be reached on M-F 8:30-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David A. Wiley can be reached on (571)-272-3923. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Arrienne M. Lezak  
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